



# City of Roswell

38 Hill Street  
Roswell, Georgia 30075

## Meeting Minutes Mayor and City Council

*Mayor Jere Wood*  
*Council Member Nancy Diamond*  
*Council Member Rich Dippolito*  
*Council Member Kent Igleheart*  
*Council Member Jerry Orlans*  
*Council Member Betty Price*  
*Council Member Becky Wynn*

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Monday, June 11, 2012

7:00 PM

City Hall

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### WELCOME

**Present:** 7 - Mayor Jere Wood, Council Member Nancy Diamond, Council Member Rich Dippolito, Council Member Kent Igleheart, Council Member Jerry Orlans, Council Member Betty Price, and Council Member Becky Wynn

*Staff Present:*

*City Administrator Kay Love; Deputy City Administrator Michael Fischer; City Attorney David Davidson; Police Chief Dwayne Orrick; Community Development Director Alice Wakefield; Environmental/Public Works Deputy Director Mark Wolff; Human Resources Director Dan Roach; Finance Director Keith Lee; Transportation Director Steve Acenbrak; Transportation Deputy Director David Low; Community Development City Planner Jackie Deibel; Community Relations Coordinator Kimberly Johnson; Human Resources Benefits Manager Karin Grindstad; Transportation Land Development Manager Clyde Stricklin; Transportation City Traffic Engineer Muhammad Rauf; RCTV Producer/Director Amy Kargus; Digital Media Designer Joel Vazquez; Deputy City Clerk Betsy Branch.*

### Pledge of Allegiance - Led by Jim Payne

## CONSENT AGENDA

1. **Approval of April 30, 2012 Mayor and Council Open Forum Minutes (detailed minutes to replace Council Brief minutes adopted on May 14, 2012); Approval of May 14, 2012 Mayor and Council Meeting minutes (detailed minutes to replace Council Brief minutes adopted on May 30, 2012); Approval of May 30, 2012 Mayor and Council Meeting Brief.**

*Administration*

Approved

2. **Approval to accept Right of Way and Easement Agreements on four (4) Hembree Road Multi-Use Path parcels.**

*Transportation*

Approved

### Approval of the Consent Agenda

*Council Comment:*

*Councilmember Price asked if when there is a follow up required for an item, how they ensure that will happen. Mayor Wood asked if she could be more specific. Councilmember Price said that Mayor Wood had promised a citizen who attended the last Open Forum meeting that he would follow up on his concerns at the next Public Safety Committee Meeting; she wanted clarification of the mechanism to make sure it would be addressed. Mayor Wood said if the citizen attends the Public Safety meeting, then he will be recognized. In addition, the Mayor said he would be glad to hear from that citizen via a phone call or email and that he would be recognized. Councilmember Price thanked Mayor Wood.*

*There was no public comment.*

**A motion was made by Councilmember Wynn, seconded by Councilmember Orleans, to Approve the Consent Agenda. The motion carried by the following vote:**

**In Favor: 6**

## REGULAR AGENDA

### Mayor's Report

#### 1. **Flag Presentation by "Operation Give Back"**

*Mayor Wood recognized the representatives from "Operation Give Back" and invited them to come forward for their presentation.*

*Paula Rowland, coordinator for Operation Give Back, introduced Amy Jackson and Barbara Sanders and said they started Operation Give Back at the Summit Hill Elementary School in Milton, Georgia as a fifth grade service project; it escalated to include the cities of Milton, Alpharetta and Roswell. She said they have been amazed by the generosity of friends, neighbors, families, and businesses throughout the area. Ms. Rowland said by joining with the American Legions Post #201, doing online research and talking with people, they have begun working with several chaplains in providing assistance for their base needs. One of those chaplains believed because Operation Give Back had done so much for them, they wanted to show their appreciation to the organization in some way and suggested giving them a flag that had been flown over the combat zone in Afghanistan. Ms. Rowland said they were so touched by this and asked if they could provide four flags, one for each of the three cities and also Summit Hill Elementary School. And recently, Chaplain Michael McDonald, sent four flags that had been flown over the combat zone. On behalf of Operation Give Back, Ms. Rowland presented one of the flags to the City of Roswell and said they hoped it would be hung somewhere in City Hall to show appreciation for the many business in Roswell that continue to help with their efforts. She noted that the flag also includes a certificate signed by the pilot, co-pilot, flight engineer, and the aerial gunner who flew the flag over the combat zone. She said Operation Give Back and American Legion Post 201 continue to work together with the chaplains and future donations could be directed to the American Legion Post or donors could email her as well for donation information.*

*Mayor Wood thanked Ms. Rowland and Operation Give Back. The Mayor said the flag would be included with other items collected in connection with the Faces of War Memorial.*

*Councilmember Wynn acknowledged her nephew who is currently serving for a year in Afghanistan and requested to have a photograph taken with the flag to send to him to show what the City of Roswell has done for the troops. Photographs were taken with members of Operation Give Back and Mayor and Council as the flag was presented to the City.*

**2. Reading of a Proclamation for Amateur Radio Week.**

*Mayor Wood recognized the amateur radio operators in attendance and read the proclamation, stating: Amateur Radio Operators are celebrating over a century of human voice broadcast over the airwaves and Amateur Radio continues to provide a bridge among societies and countries creating friendships and sharing of ideas; and The North Fulton Amateur Radio League members have provided countless hours of uncompensated community service by providing backup communications services to the City of Roswell Police and Fire Departments, communications to local charitable events, and other organizations throughout the region. The City of Roswell recognizes and appreciates the diligence of these "Hams" who also serve as weather spotters in the Skywarn program of the National Weather Service and provide relevance in our highly modern technical world by providing emergency communications when other systems may fail. The North Fulton Amateur Radio League will participate in a yearly national event sponsored by the ARRL called "Field Day" as an emergency preparedness exercise that will take place on June 23rd and 24th at Waller Park Extension. This event will demonstrate Amateur Radio skills and readiness to provide self-supporting communications without further infrastructure being required. Mayor Wood proclaimed the week of June 18-24, 2012 as Amateur Radio Week in the City of Roswell, Georgia and urged all of the citizens to attend the Field Day and recognize the importance of this event and the significance of amateur radio to all of our citizens and community.*

*Scott Straw, the 2012 Chairman of the North Fulton Amateur Radio League "Field Day" said this annual event had been held for decades in the City of Roswell. He said it is a fun and exciting time for amateur radio operators to gather for a group event and an opportunity to show the public the skills and abilities they possess through training, practice, study and communicating without the benefit of electricity from normal means. He said they not only communicate around the city but around the state, the nation and the globe. Mr. Straw invited the public and the City Council to attend the event to experience and learn what an amateur radio operator does. He said it is a 24-hour field day at Waller Park Extension starting Saturday June 23 at 2:00pm running through Sunday, June 24 at 2:00pm and there will be a special amateur radio station setup specifically for the public to operate where they will be able to use a microphone and make contact with another amateur radio station somewhere in the world. He invited everyone to attend the event.*

*Mayor Wood thanked the "Hams" for providing this emergency service for the City of Roswell.*

**Administration and Finance Department - Councilmember Rich Dippolito**

3. **Approval for the Mayor and/or City Administrator to sign the necessary pension plan documents with the Georgia Municipal Employees Benefit System (GMEBS) and the International City/County Management Association (ICMA) for implementation of the Pension Plan design for individuals hired on or after March 1, 2011. (This item was deferred from the May 30, 2012 Mayor and City Council meeting)**  
***Presented by Dan Roach, Human Resources Director***

*Councilmember Dippolito introduced the item and said there will be a committee meeting tomorrow night for further discussion if any of the Councilmembers have questions.*

*Human Resources Director Dan Roach presented this item. He said the staff recommendation is to provide both a hybrid plan design made up of a defined benefit (DB) component and a defined contribution (DC) component in the pension plan, and also a defined contribution benefit plan alone that they would allow new employees to make an irrevocable choice in the plan that best meets their family circumstances. Details of these recommendations were included in the agenda item that accompanied the May 30, 2012 Council agenda, but since that time, Mr. Roach said he was asked for additional information regarding how they would go about constructing a defined contribution pension plan without the hybrid plan design. He said the details and additional information regarding the plan design is included with tonight's meeting agenda item.*

*Mayor Wood asked Mr. Roach to explain the difference between a defined contribution plan and the hybrid contribution plan.*

*Mr. Roach explained that a defined benefit plan is a traditional type pension plan where an employer and/or with employee contributions pays into a plan and at the time of retirement, a retiree receives a benefit based on a formula, which typically is a percentage of their last salary multiplied by the number of years of service with the employer. By contrast, a defined contribution pension plan is an investment vehicle where the employer's contributions and/or the employee's contributions, if there is an employee contribution, are put into what is more typically a 401K type investment vehicle, when at the time of retirement, the employee would have the option of drawing from the fund in the form of an annuity with an annual payment or the fund could be used per their circumstances. There is not a benefit formula; it is whatever the fund grows to over time. Mayor Wood asked if the hybrid would be a combination. Mr. Roach said it would be a combination thereof.*

*Mayor Wood asked for council questions.*

*Council Comment:*

*Councilmember Dippolito asked Mr. Roach to explain the pension plans provided by the cities of Alpharetta, Sandy Springs, and Johns Creek.*

*Mr. Roach said when looking at the local labor market, they found that those cities had a defined contribution plan comprised of a specified contribution in the form of a pension contribution coupled with a matching schedule of contributions where the city matches the employee contribution up to a maximum of 5% that is 1:1 up to a*

maximum of 5%. He said that the City of Alpharetta makes a 10% defined contribution to the pension vehicle and then has a 1:1 matching contribution in the deferred compensation program up to a maximum of 5%, such that if an employee puts in 5% of their salary, the city would put in an additional 5% for a total contribution of 20% of salary going into the pension fund. He said Sandy Springs and Johns Creek have similar plan designs but the specified contribution is 12% of the fund instead of 10% at Alpharetta.

Councilmember Dippolito asked if Roswell modeled its plan after Alpharetta, would it be competitive in the marketplace. Mr. Roach replied he believed it would. Councilmember Dippolito said Roswell currently has a defined contribution plan, if his terminology is correct, but also has a contribution in addition to the pension plan and asked how that would work with the plan that is being suggested.

Mr. Roach replied that Roswell currently has a deferred compensation (DC) plan and it is confusing because there are two different things called DC. He said for the current deferred compensation program, if an employee puts in 2% of their salary, the City will match with 1% to a maximum of that 1%, but as was described earlier, there is not a schedule. He said if we choose a plan design like Alpharetta's, the matching schedule would be in deferred compensation with the pension contribution that would go into a 401A which would be the City's funds and the matching schedule would be deferred compensation. The City's funds would also go into the 401A and the employee's contributions would go into a 457 vehicle. Those funds would be comingled for investment purposes in order to capture the compounding of interest on those investments but they would be separate funds.

Councilmember Dippolito asked if the existing deferred compensation plan for existing employees would stay in place.

Mr. Roach replied yes. He said we froze the defined benefit pension plan to new entrants on March 1, 2011 and since that time, we have hired 25-27 additional employees who are not participating in that pension plan but may have opted to participate in the deferred compensation plan. We would need to analyze where we are with all of those employees. He said if we went to a plan design similar to Alpharetta's, the 1:1 match up to 5% is a richer benefit than a 1:2 match and that the 1% would be captured in the total 1:1 up to 5% match. Councilmember Dippolito asked if the recent hires would be an exception and prior employees would continue with the current benefit. Mr. Roach replied there are options but if it is Council's decision to keep the existing plan as is, then employees like himself would be grandfathered into that structure. Councilmember Dippolito thanked Mr. Roach.

Councilmember Orlans asked for the purpose of clarification, if tonight's motion is just to approve a defined contribution plan. He said that Mr. Roach had put in a couple of examples but had not put in his suggestion or what they would do. He asked if tonight's motion is strictly to approve a defined contribution plan with details to be approved later, or will all of that be approved tonight. Mr. Roach said he wasn't sure he could answer that question. Mayor Wood said they would need to hear Councilmember Dippolito's motion first. Councilmember Orlans said he was trying to clarify if they are covering everything and all of it needs to be discussed or are they just voting on what was laid out for the DC.

Mayor Wood asked Councilmember Dippolito if he was prepared to make a motion for the purpose of discussion. Councilmember Dippolito stated his motion.

1st Motion: Councilmember Dippolito moved for Approval for the Mayor and/or City Administrator to sign the necessary pension plan documents with a Defined

*Contribution Plan of 10% with a 1:1 match up to 5%. Councilmember Diamond seconded.*

*Mayor Wood asked for Council discussion.*

*Council Comment:*

*Councilmember Orlans said he wanted to clarify what has been said and asked if the following is correct. He said the current 1% that the City is matching is going to be incorporated into this, so that will theoretically go away, and instead of the original 13%, it would now be a 10% and a 5%. Then, the current plan with the 1% to 2% match would be incorporated into this and will not be an addition.*

*Mr. Roach replied yes, for employees hired after March 1, 2011 who would enter the new pension plan design, the matching schedule of 1:1 up to 5% would be a component of their pension but it would actually be in the form of payments to deferred compensation. The 1:1 match up to 5% is a richer benefit than the current 1% matching 2% of the employee's contribution. He said that Mayor and Council have options on how to design that but he assumed the 1:1 match would incorporate the 1:2 that currently exists for other employees.*

*Councilmember Orlans said that was what he thought; the current program would go away and it would all be encompassed into this one program. He said he assumed that people would be able to rollover those funds so there will be one plan being administered so there is not a duplication of cost and asked if that is correct.*

*Mr. Roach said he wasn't sure he understood the question. He said all current employees who were enrolled in the pension plan prior to March 1, 2011, without regard to the pension plan they are enrolled in; have been participating in deferred comp at an employee contribution of 2% that earns a 1% City match. He said that has not been coupled with the pension, we have looked at that as personal savings. For individuals hired after March 1, 2011, we will make that matching schedule 1:1 up to 5%, a component of the pension plan. He said we have talked about flexibility and the ability to have that piece linked to annual budgetary approval.*

*Councilmember Orlans said he did not understand why that would be linked to the current pension plan.*

*Mr. Roach said, not the current plan. He said going forward, for individuals hired after March 1, 2011, the 1:1 matching schedule up to 5% would be considered a portion of those employee's pension plan. He said in previous dialogue, it was deferred compensation or personal savings with a City match of 1% to the employee's 2%. He said that piece still exists for all the individuals prior to those who would enter the new pension plan design being hired after March 1, 2011. He said we will have 1:1 up to 5% going forward unless we consider offering 1:1 up to 5% for all City employees. He said he was not sure if that is the intent of Council.*

*Mayor Wood asked for clarification of Councilmember Dippolito's motion.*

*Councilmember Dippolito said the intention of his motion is to leave the existing benefits in place for employees up to March 1, 2011 and have the new plan take place for all employees following that date.*

*Mayor Wood asked Councilmember Orlans if he understood the motion.*

*Councilmember Orlans asked if his understanding is correct that the cutoff date is still March 1, 2011 and all employees that were here prior to that date will still have a*

defined benefit plan and the City will keep in place the 1:2 match for those people. Mr. Roach replied yes, if that is Council's direction. Councilmember Orlans said he is just trying to clarify what is in the motion. Mr. Roach said he would not advocate changing the contribution schedule of 1:1 up to 5% for all employees that he could argue the defined benefit plan providing a guaranteed benefit replaces some element of that richer matching schedule. He said it would not be his recommendation to include all current employees in the 1:1 match up to 5%; that was strictly a component of the new pension plan design moving forward for people hired after March 1, 2011. Councilmember Orlans said then new employees hired after March 1, 2011 will be eligible for this defined contribution plan. Mr. Roach said yes, sir. Councilmember Orlans said and any employees hired prior to March 1, 2011 will not. Mr. Roach replied that they have previously discussed the option of allowing employees to convert over, but he didn't know if that is what Council wants. Councilmember Orlans said but they are not getting both. Mr. Roach said that is correct. Councilmember Orlans asked if new employees from March 1, 2011 will be under this defined contribution plan of 10% plus a potential of 5%. Mr. Roach replied yes they will. Councilmember Orlans asked if employees here before that date will still be under the old defined benefits plan. Mr. Roach replied, yes sir. Councilmember Orlans asked what we are doing to the 1:2 for those employees; if it is being kept for those employees only or is it being terminated as of this new benefit so that they will have only the defined benefit, and new people will have only defined contribution.

Mayor Wood asked Councilmember Orlans if by "those employees" he meant prior employees or new employees.

Councilmember Orlans said he means prior employees. He said the new employees would not be eligible for the 1:2 match; they will only be eligible for the new defined contribution plan. He said he is trying to clarify if they are keeping what is basically a third plan that would be a grandfathered plan for prior employees still getting a 1:2 match on top of defined benefit plan. He asked if the 1:2 goes away or is it frozen where it is, or theoretically rolled over into this defined contribution to eliminate administrative costs. He said otherwise, we are keeping three plans, the defined benefit, the defined contribution plan and the old deferred comp plan. He said he is trying to understand what they are going to do as far as continuing the other 1% because of the administrative costs.

City Administrator Kay Love said for clarification the City wouldn't have three plans. She said for the deferred comp plan that is in place now, the only difference in the old plan, the pre-March 1, 2011 plan and the possibility of whatever plan is put in place now for people hired March 1, 2011 or later is just the matching component, it is still deferred comp. This is not a third plan. The deferred comp plan is in place now with a provider, only the matching schedule is different. The employer share goes into a 401A and the employee share goes into the 457B up to those limits. She said what staff has been working on for the past year is to simply devise a plan to address employees who were hired March 1, 2011 or later; staff was not under the impression that they were going back and looking at the defined benefit and the deferred comp. She said they could certainly do that at any point but this recommendation and the different options that they have explored did not contemplate making a change to the benefits for pension for employees hired prior to March 1, 2011.

Councilmember Orlans noted that combining it all had come up several times in the work sessions and his thoughts were that the direction they are heading into is having a defined benefit and then having the defined contribution for new hires after March 1, 2011, and the deferred comp of a 1:2 match would go away and there would only be a defined contribution and defined benefit. He said there can be a



*deferred comp plan for them to put their money into, but he was talking about the match from the City. He said he is only trying to clarify that there is not going to be a separate administrator and a separate plan that is costing administrative dollars and it is all going to be combined under one administrator for the deferred comp and the defined contribution.*

*Ms. Love replied that the deferred comp is a separate contract from the defined contribution. She said of course, the defined contribution is not yet in place. She said the matching schedule can be different but it is one contract and we are not paying for different types of plans because the employee contribution goes into one place and the employer goes into another; it is just the different matching schedules, which is just the payroll deduction aspect of that.*

*Councilmember Orlans asked Councilmember Dippolito if the motion is saying that the 1% is staying in place and will continue for prior employees on top of the 10% and the 5% that is being done for new employees.*

*Councilmember Dippolito said employees prior to March 1, 2011 will be grandfathered. He said to Councilmember Orlans that when he said, "will stay in place on top of" is mixing two different plans. There will be a grandfathering of that matching benefit for everyone prior to March 1, 2011. Councilmember Orlans asked if that is what he wants to do, to grandfather that in and it keeps going and the match continues for the prior employees. Councilmember Dippolito said that is right. Councilmember Orlans said we only need to grandfather defined benefit; we don't have to grandfather the deferred comp. Councilmember Dippolito said the discussion all along has not been to change the benefit for the existing employees, which is what his motion includes. Councilmember Orlans thanked Councilmember Dippolito.*

*Councilmember Price asked Mr. Roach if there is a mechanism in the motion or in his mind that employees who are currently under the DB plan could switch to the DC. Mr. Roach said he couldn't answer about the motion. Mayor Wood said it is not part of this motion, that would be a separate motion. Councilmember Price asked if it is feasible or workable. Mr. Roach replied it is possible. In one of the work sessions, we talked about testimonial evidence that shows that typically that is a lot of work for very few takers but it is an option and we can explore that option. Councilmember Price asked for the total percent of salary that the City outlays annually for the defined benefits. Mr. Roach replied the recommended contribution for this year was 14.54%, as noted in the memo included with the agenda item for tonight's package. The minimum annual contribution was closer to 11% of salary. Councilmember Price asked if that would change depending on the needs. Mr. Roach replied yes it would. Councilmember Price said in the future it could go up and asked if there is a maximum. Mr. Roach replied yes, there is no maximum. It is determined based on amortization tables and the fund liabilities and assets and assessment of where we are and where we need to be going forward. Mr. Roach said one of the slides that had been looked at in one of the work sessions showed a logical progression over the years because of rebounding over the economic circumstances of 2008 and 2009, we are peaking at the higher level of that contribution and now working our way back toward a declining participation rate. Councilmember Price asked for those cities where they are underfunded, what percentages have they reached to fund. She said once it is defunct, it is defunct and you are not obligated to do anything. She asked how high had people gone up in some cities in order to try and maintain without going defunct. Mr. Roach replied he would have to research that; he cannot answer that right now. He said typically those that are lesser funded than the City has been, are those municipalities who have not met their recommended annual contribution to the plan who have automatic built in cost of living increases on retiring benefits who have retiree health insurance benefits; none of which the City of Roswell*

has currently. He said the elected body has done a great job over the years in being very responsible in meeting the recommended annual contribution. He said we were funded at 83% and those that have been in the news media, some that are very close by, were down in the 55% and 60% range; by comparison, our fund was very healthy. Councilmember Price asked what percent of employees take advantage of the deferred compensation. Mr. Roach said about 263 employees which is about 42% of our current employee headcount who participate at a level high enough to get the City's match. He said the City's 1% contribution for those approximate 263 employees is about \$141,000 this year. Councilmember Price asked if the 5% in the second half of the motion is a total 5% or up to 15% with employee sharing or is it another 5% from the City and another 5% from the employee. Mr. Roach replied that he envisioned the plan and he believes is the way that Alpharetta does this, is a 10% fixed contribution to the defined contribution pension plan and then a 1:1 City to employee match up to 5%; so it would be an additional 5% from the City, making the City's total contribution 15% to the employee's 5%. Councilmember Price said then it is basically 20%. Mr. Roach said yes with total contribution. Councilmember Price said that would be 5% coming from the employee. Mr. Roach said, yes. Councilmember Price thanked Mr. Roach.

Councilmember Igleheart asked what the impact of this is over the long term versus where we are and what we have projected. He said we have seen where we were, but this is different from that with those numbers and asked how we are on the long term. Mayor Wood asked Councilmember Igleheart if he is talking about the taxpayer. Councilmember Igleheart said he is referring to the City's budget; how does that impact us on what we are paying long term and what that impact is; he referenced the charts that had been shown. He asked how this compares to what we were about to approve last time. Mayor Wood asked if it is going to cost the City more or will we stay where we are as far as the budget. Mr. Roach replied in the long term, it will cost the City more because as the natural progression of the payroll increasing over time, and although there is a fixed contribution to the plan, that is a fixed percent on a growing number. He said then over time, the City would end up paying more in a defined contribution, but shifting the risk because we would not be carrying the burden as was talked about in a defined benefit plan of a guaranteed benefit that may go through very difficult times. He said there is a tradeoff there; in the long run, he believes it will cost the City more but we would be shifting the risk. Councilmember Igleheart said he is somewhat uncomfortable after all the discussion Council has had, to make a decision without knowing what those numbers are and without seeing it in detail. He said we know that at least it worked for Alpharetta. He said more typically, we have also seen how it impacts individual employees at least by general ranges. He said he assumed when now reducing that first basic level that we will put it in and then move it into a contribution for the employee, haven't we shown that those who have the lower income generally put less into a match type situation. He asked if ultimately we are actually reducing the money that those employees would likely have. Mr. Roach said he thinks those at lower income levels are arguably less able to participate at higher levels and the matching schedule going up to 5% encourages their participation. We have a substantial educational effort that is to come with our employees; this is a paradigm shift and we are fundamentally changing the way we do pension with our new hires going forward. Human Resources would be incumbent to engage in a very active educational campaign with the employees about the benefits of participating at the highest level that they possibly can. Councilmember Igleheart asked if it is correct that 42% of the people who are currently taking part in the match program are generally higher income. Mr. Roach said that isn't necessarily the case; there is probably a good mix of people participating at that level. Councilmember Igleheart said that was his concern, which would be starting out by giving those people even less than with the other plan. Mr. Roach said therein lies the question, the defined contribution plan as compared to the

defined benefit plan is speculative in nature. None of us knows what the market will do over the next 25-30 years. The scenarios that were presented in the work session suggested that assuming a conservative rate of return, that individuals in a defined contribution plan could fair as well or better than they will in a defined benefit plan. He said it depends on how the market treats these investments going forward. Councilmember Igleheart said he doesn't have a conclusion on that, just a concern for something that should be considered in moving this forward.

Councilmember Orlans asked for clarification, how this would work going forward. He said the 10% to 5% is in this motion. He asked if the budget will determine each year what the defined contribution is or will Council vote separately from the budget to determine the match in the future. He said he knew they would not change it every year, but said they would want to be consistent, but at some point in the future, it may change. He asked how that will be handled in the future, if it will just be in the budget or brought up as a separate item if this is passed and it is going to be defined contribution then how are the other parts determined each year.

City Administrator Kay Love responded that Councilmember Orlans is correct that this could be revisited every year. She said from a staff perspective in looking at other jurisdictions that have this plan, would be that the 10% would be a fixed cost much like the required annual contribution on the DB and the flexible piece would be the other 5% that would be revisited annually during the budget process. She said if a 10% to 5% is put in place, it would remain there until it is changed and each year as the budget is being developed without any preliminary guidance, the 10% to 5% would be put in and as the budget is deliberated, the expectation would be that adjustments would be made, not to the base 10% because that compromises the plan, but it would be within the 5% where there would be flexibility based on the financial situation was on an annual basis. Councilmember Orlans said then it would be separate, it would not be just in the budget brought forward to be approved with the budget. Ms. Love said it would be in that to develop the budget, that is one of the funds, so the budget as it is being developed by the Mayor, the staff would do that just like is done every year, to provide the estimate of what the pension is going to cost and then the Mayor would make a determination as to what he would put in the recommended document. She said perhaps there would be preliminary discussions as there have been in the past about some personnel issues and give guidance to staff in advance because it is helpful if the Mayor knows what the Council's position is. Councilmember Orlans said then whatever is determined in the budget would be passed as part of that; it would not be a separate item like it is tonight. Ms. Love said that is correct; it would not have to be. She said it could be if Council chooses to pull it out, but the preference would be that it roll through the budget process. Councilmember Orlans said that was what he was thinking and just wanted to clarify that.

Councilmember Orlans said in reference to the question on the charts mentioned by Councilmember Igleheart, he thought from the work sessions, that most of them were based on a 13% level that was compared to the DB and asked Mr. Roach if that was correct. Mr. Roach replied, yes. Mr. Orlans said that if they take advantage of it, then we are talking about a 20% total contribution of salary, so every one of the scenarios should work out better. He said if they are willing to contribute the 5%, it is going to be matched, which is a 100% return on their money right away and theoretically, it would be better than the other way.

Mayor Wood asked for public comment. There were none.

The Mayor noted there was a motion and a second and this is only voting on the defined contribution plan for new employees. He asked for the purpose of

clarification, if they will be voting on something other than the defined contribution plan for new employees.

Councilmember Dippolito said we are not. He said Councilmember Price asked the question about enabling employees to switch from the DB to the DC if they so choose and asked if that is part of what is decided tonight or could more research be done on that to be brought back to Council to look at on a later date. Mr. Roach replied that as he understands the agenda item, it gives staff approval to move forward with drawing up plan documents. He said the discussion of who is eligible to participate in the plan would likely have to be written into the plan documents.

Mayor Wood said this could be taken in phases because it has been complex and problematic to get just the vote for the new hires. He said if we could firm this up and move on, we can address the conversion at another time. Councilmember Dippolito said he was in agreement with that.

Mayor Wood said there is a motion and a second to create a defined contribution plan for employees hired after March 1, 2011. Mayor Wood called for a vote.

There was an inaudible comment from Councilmember Price about a concept. Mayor Wood said this is passing, this isn't a concept; this is drawing up a plan based upon specific numbers.

Councilmember Price said we had talked earlier that we would max it at 3%, not 5% and said she wasn't sure if that discussion had gone anywhere.

Mayor Wood asked if the current budget will accommodate this plan as adopted without adjusting the budget. Kay Love replied yes, there is some money in there for transition; while we don't know the exact numbers, Council did appropriate funding of \$460,000 for a transition. She said we had expected that this would take place sooner than now which means we have some extra money that has been saved up to this point; for FY2013 we are positioned for this to be within the budget numbers that have been appropriated as of May 30. Mayor Wood said then this plan up to a 15% match, we could accommodate with our current budget and next year, we would be reviewing this number along with the rest of the budget. Ms. Love said, just like before. Mayor Wood said we could convert it to a match up to the first three points, if revenues would support this. Ms. Love said that is correct.

There was no further council discussion.

Councilmember Price said the transition cost is something she also wanted to bring up because that concerned her. She said when we say transition, there is really no transition if this is new employees, it is an inception for them. She said she didn't know what the transition is other than they will subsidize the 5% with that. She asked if that is the idea and then next year they might have a whole new problem.

Mr. Roach responded that they had discussed, they would have to go back to March 1, 2011 or any dates of hire thereafter and catch up the individual employees with the City's contribution to the plan and the match. Mr. Roach said we also said in work session and committee conversations that because the absence of the plan was not of the employee's doing, that we would make them whole for their contribution for this period; therefore, the catch up provision would include up to that entire 20% for those 25 or so employees.

Mayor Wood said he would like to move on to the next agenda item. He said if the Council has any questions regarding the consequences of this budget, then they should address those with staff.

A motion was made by Councilmember Dippolito, seconded by Councilmember Diamond, for Approval for the Mayor and/or City Administrator to sign the necessary pension plan documents with the Georgia Municipal Employees Benefit System (GMEBS) and the International City/County Management Association (ICMA) for implementation of the Pension Plan design for individuals hired on or after March 1, 2011 with a Defined Contribution Plan of 10% with a 1:1 match up to 5%. The motion carried by the following vote:

In Favor: 6

#### **Community Development - Councilmember Nancy Diamond**

4. **RZ12-04, CV12-01, 9050 Nesbit Ferry Rd., Dane Nesbit, Land Lot: 835.** *(This item was deferred from the May 14, 2012 Mayor and City Council meeting)*  
*Presented by Jackie Deibel, Planner III*

*City Planner Jackie Deibel stated this is a request for rezoning of 12-04 and concurrent variance 12-01. The proposed site plan for this rezoning is for 19 single family attached homes on a 5.03 acre property yielding a density of 3.8 dwelling units per acre. The applicant is requesting four variances as follows:*

- 1. To reduce the required interior front setback from 30 feet to 15 feet.*
- 2. To reduce the corner/side yard setback from 20 feet to 5 feet.*
- 3. To reduce the required interior sidewalk requirement from both sides of the street.*
- 4. To allow an increase the individual lot maximum coverage from 40% to 50%.*

*Ms. Deibel displayed an overhead slide and said it was an aerial view showing Devonshire to the north, south and west of the property and the City of Johns Creek to the east. She then displayed a chart and pointed out dwellings units to the north, south and west in Devonshire of 6.2 units per acre. The proposed rezoning is at 3.8 units per acre. She displayed a tree survey and pointed out a cluster of trees in the front to be saved by the applicant. The Planning Commission recommended denial of the rezoning and the variance request during their April 17, 2012 hearing. The Community Development staff recommends approval of the rezoning and variance requests. Staff recommends the following six conditions with the approval:*

- 1. The site shall be developed in accordance with the site plan stamped "Received February 7, 2012."*
- 2. The bike path and sidewalk along Nesbit Ferry Road shall be constructed prior to the first certificate of occupancy for the homes.*
- 3. The demolition of the existing house shall not impact the existing stand of specimen trees.*
- 4. A preliminary plat for the property shall be required prior to the issuance of the Land Development Permit.*
- 5. A final plat shall be recorded at the completion of each of the separate blocks built.*
- 6. All construction and equipment trailers shall stay out of the tree save area.*

*Ms. Deibel said staff received new proposed conditions at 4:30pm today from the applicant who has been working with the Devonshire Homeowners Association over the last couple of weeks. She said she would allow the applicant to address those conditions when he makes his presentation.*

*Council Comment:*

*Councilmember Igleheart asked what would be allowed under the current zoning on the existing property.*

*Ms. Deibel replied it is zoned AG-1 under Fulton County, so it is FC-A. The lot sizes would be 1.0 acre, which is required. They are allowed to do a kennel, a veterinary clinic hospital that is allowed under the AG-1 zoning classification. A roadside vegetable stand; basically agricultural uses, other than the kennel, which is permitted by right under AG-1 and that would be allowed at this time.*

*Councilmember Igleheart said if they chose to build single-family homes under the E-2 zoning if that would be 4-5 depending on the number. He asked if the allowable townhome numbers had been calculated without the variances. Ms. Deibel replied if they do not get the variances, this would drop by 4-5 lots to about 14 units.*

*Councilmember Orlans said without the variances, this may drop by 4-5 lots and asked if that is the same if they went into the tree save area or is that working around the tree save area. Ms. Deibel said that is working around the tree save area; if they went into that area, they could probably build the 19 units and take down all the trees. Councilmember Orlans said that would be the alternative to removing the variances; that they could build the same number of lots but they would have to have approval to take the trees out. Ms. Deibel said that is correct. Councilmember Orlans thanked Ms. Deibel for the clarification.*

*Applicant:*

*Daryl Cook with Watts & Browning Engineers, Inc., representing the applicant said he would be making the presentation but the applicant would like to speak first.*

*Dane Nesbit stated he is the applicant and owner of the property along with his siblings, David, Dan, Don, and Daryl. He said he wanted to read into the meeting minutes tonight, statements and a constitutional challenge so that everyone is aware of their standing. He read from the April 17, 2012 Meeting of the Roswell Planning Commission, "Harvey Smith stated that his impression is that obviously, he thinks the property as is has a diminutive value if it is not rezoned, regardless of whether or not the house sitting on the property had been burned." Mr. Nesbit continued reading another portion of the minutes of statements made by Harvey Smith, "The property has sat there in disrepair, is not marketable in its present condition, it is not marketable in the present zoning. Smith thinks personally, when he is surrounded by a much higher density he thinks they are kind of calling the grips of some of the things that had to do with being annexed from Fulton County and what Fulton County did, not what the City of Roswell did." He continued to read from Harvey Smith's statements, "But one has to look at what is the highest and best use for the property. He thinks that when one asks somebody to say that should be a natural green space that they like to look at that that is considered an unfair taking." Mr. Nesbit said zoning denied a denial I would consider to be unconstitutional as it applies to the subject property as it is currently zoned; it would deprive the applicant and the other property owners of their property rights pursuant to Article 1, Section 1 and Article 1, Section 2 of the Georgia Constitution of 1983, the Equal Protection and Due Process clauses of the fifth and fourteenth amendments to the Constitution of the United States of America. The deprivation of the property without due process violates the constitutional prohibition against the taking of private property without just compensation. He said when they began this process over a year ago, they took a very unusual stance in their agreement with the developers; they had a clause placed in there that if they felt there was a reason that the City Council should turn down this zoning, that they had the right to withdraw it. Mr. Nesbit said, to that point, Mark Shaw, his company, Daryl, began with the premise of 2006 when this property had*

come before the City Council prior with a different proposal. That proposal had a lot of conditions in there that would have removed the specimen trees; had a lot of opposition from the community because of the placement of the main entrance to it which would have gone through the critical root zones of the trees. He said there were continual requests that that not occur. He said, we worked backwards from that; the City of Roswell wanted the trees preserved and was willing to turn down and deny that previous zoning which in hind sight is not incorrect. He said he personally took the actions necessary in Fulton County Superior Court to halt the litigation six years ago. He said it was with that action that the plaintiff through the County Administrator's permission was allowed to pursue. Once that was done, they then took the steps that brought us to tonight. He said the plan that Daryl is to propose on behalf of himself and his siblings does everything that the previous City Council had requested in addition to having a density lower than the density that the City Council and legal staff were willing to accept in settlement of that litigation that ended in 2008. He thanked Council for their time.

Daryl Cook said he thought Jackie Deibel had done a good job of presenting the plan and had met with some of Council as well. Mr. Cook said the plan as Mr. Nesbit stated originated from their understanding of the desire of the City to save the stand of specimen trees out front. He noted that the density was lowered; they looked for a zoning category that would be appropriate versus trying to come up with something else with a huge litany of variances. After meeting with Council and staff, the RTH-A zoning was most appropriate. He said they did an initial plan just to verify what density would get on that property with or without trees. They were able to secure nineteen (19) lots. That plan is available for review but it does not save the trees. He said they then looked at what it would take to save the trees and the critical root zones. Mr. Cook said they sent another arborist/forester to the site to verify that the trees are still healthy and they are. There was one small tree that had died but it was within that cluster and it didn't make a difference. Referring to the site plan, Mr. Cook said the variances that were generated from that effectively are because of saving those trees. They are taking the footprint of those lots and compacting them somewhat which dictates a smaller lot, therefore a slightly higher cover on the lot; it also dictates some setback reductions which Ms. Deibel stated. He said they think the plan works with the land topographically as well as saving the trees and working within the neighborhood; the density is much lower than the surrounding properties. Throughout this process, they have met with members from the home owners' association board and have come up with some conditions which they believe are agreeable to both sides. He asked Ms. Deibel to display the current conditions on the overhead. He noted that the President of the HOA requested he read the conditions modifications as well as the standard code included in these conditions that the City code requires.

Mr. Cook read the conditions as follows and commented on each item:

1. Nineteen (19) homes at a density of effectively the 3.78 units per acre.  
(Mr. Cook said this condition has not changed.)
2. All homes shall be a minimum of 2400 square feet of heated floor area with a maximum height of thirty-five (35) feet.  
(Mr. Cook said they had agreed to the 2,400 square feet minimum heated area, but had deleted the maximum building height of thirty-five (35) feet because it was already code but the HOA has asked that be put back in. So, this is to add back the maximum height to be thirty-five (35) feet, based on average height measurements.)
3. A minimum street width of 24 feet shall be required from back of curb to back of curb.

*(Mr. Cook said this condition has not changed and it is the standard.)*

4. A licensed landscape architect shall complete the proposed landscaping plan for the entrance and detention pond. Detention pond shall be screened with a dense evergreen hedge (i.e. Arborvitae or Cryptomeria) on the western and southern sides and it shall be a minimum of 6 feet in height and no more than 7 feet on center.

*(Mr. Cook said the condition previously stated that the trees be planted four feet apart, but the arborist has since recommended the trees not be planted four feet apart. He said this change has been acknowledged by the HOA President.)*

5. The proposed residences shall be traditional, two stories, in style and architecture and shall have two car attached garages. Additionally, the architectural style and composition of the exterior of the front of the homes shall consist of brick, stacked stone, stucco-type, cedar shake-type, hardi-plank shake type, and hardi-plank siding, or combinations thereof. Vinyl siding shall not be allowed on the exterior of any home.

6. Devonshire agrees that the developer will install a pipe to the subject property to allow storm water from the property to enter storm system as shown on the attached site plan. This is subject to an independent review that the current system within Devonshire can handle the added storm water and agreement by 67% of the Devonshire homeowners association to grant the proposed easement and delete the requirement from the current covenants that 67% of first mortgage holders also approve to grant the easement.

*(Mr. Cook said that is HOA document information, this minimum percent and that the lenders require that as well. He continued to read the condition: In the event Devonshire is unable to acquire the 67% approval of the homeowners, Devonshire and Developer shall agree the storm water shall be allowed to discharge and drain on the surface. Mr. Cook said they will put in appropriate level spreaders and things like that to get it back into the same flow regime that exists now. He said the HOA has asked and we have agreed to add, "subject to the independent review.")*

7. Setbacks for the proposed development shall be:

- Front setback: 15 feet (20' minimum to garage door)
- Rear setback: 30 feet
- Side setback: 5 feet

*(Mr. Cook said those comport to either code in the case of the rear or the requested variances that we have requested for the zoning.)*

8. All front, side and rear yards of the proposed residences shall be sodded as well as landscaped common areas.

*(Mr. Cook said they agreed to add, "rear" yards as well. He said that was important to the board and it is a change.)*

9. A mandatory homeowners association shall be established for the proposed community. The homeowners association shall be responsible for the upkeep and maintenance of all common areas, landscaping around detention pond, and entrance area contained within the proposed community.

*(Mr. Cook said there are no changes with this item.)*

10. Developer will install a 6-foot wooden fence along the perimeter adjacent to the Devonshire community property.

*(Mr. Cook directing his comments to City Planner Jackie Deibel said, "that still requires us to put in the landscaping there as well; we can add it or not, but we still would have to put in the landscape strip that is required by code as well. This is not an in lieu of the landscaping along the perimeter, it is in addition to the landscaping*



on the perimeter.”)

11. All homes shall be attached as required per Section/Chapter 5.13.4 and 9.5(c) of the City zoning code. The attached portion however, may be placed along the side of each home at any point.

(Mr. Cook said, “The reason that has come in is the site plan shows them more towards the front and the community and some others would like to see those moved a little more towards the rear but not be in a certain designated point; architecturally we may vary that attachment, but it is not incumbent that it be per the site plan at the very front of the units; to kind of give them a more detached look if you will from the street side.”)

12. Lot 1 shown on the rezoning plan completed by Watts & Browning Engineers Inc. dated 2/13/2012 will include a larger driveway to allow homeowner to turn around on the driveway prior to exiting onto the subdivision entrance road.

(Mr. Cook said effectively just a little turn around so they can back out of their drive and head out of the driveway head first on the interior street versus backing into that road.)

13. Additional landscaping shall be located behind lots 16 through 19. This landscaping shall be subject to the Devonshire HOA and the City Arborist.

(Mr. Cook said this is an additional condition. These are the lots that back up to Nesbit Ferry Road to screen the homes from Nesbit Ferry Road. He said the site plan already shows a double row of evergreens in that area and they may want to enhance that a little bit. Obviously with the arborist, part of that discussion as well.)

Mr. Cook said those are the conditions they believe are agreeable from both the developer/owner and the Devonshire board. He said there are some people who don't want this to happen at all but he believed they had spent a lot of time meeting with them and they have spent a lot of their time and have been wonderful to work with while pulling it all together.

**Council Comment:**

Councilmember Wynn referring to Item #6, asked Mr. Cook about the 67% of Devonshire homeowners and if there is a time limit where they are required to provide the signatures. She said her concern is that if there is not a time limit, they could drag this out for years. She said she didn't think they would, but suggested putting a time limit to acquire those signatures to avoid it being open ended. Mr. Cook replied that makes sense, he thanked Councilmember Wynn for bringing it up and said they could discuss it with the HOA. Councilmember Wynn asked staff if a time limit on this would need to be a part of the zoning conditions or could it be added later.

Community Development Director Alice Wakefield suggested that since this is a condition of zoning the time limit should be entered here. Councilmember Price said this is open ended and if there is some type of time limit added and the project is approved, then you could go ahead with the project. Mr. Cook agreed and said the detention would change somewhat by virtue of that as well. Councilmember Price said that engineering and everything else would change if that 67% was not required. Mr. Cook said they will talk with the Devonshire people to get that worked out momentarily. Councilmember Wynn referred to item #12 and asked if they were in agreement with the turnaround. Mr. Cook said they could handle that.

Councilmember Diamond referring to Mr. Cook's statement regarding when they are varying where they will place the attachment, asked if that would be different between homes or would it be consistent. Mr. Cook replied it may be different; they have

several different elevations of product, each one with a slightly different roofline; they want to be able to keep that diversity, but the rooflines must work together. He said it could be in one case that one model next to another model may be six feet from the very rear of the structure but with two other models it could be eight feet from the rear of the building. There will be some variance with that. He said they hope to keep them towards the rear but they would like to have the option that is not going to be exactly per the site plan but they don't want to have it at the front; that was just a place keeper that says we will attach these. He said want to be able to vary that and have it architecturally pleasing rooflines. Councilmember Diamond said she doesn't want it to look like some are attached and some are not if they are vastly different. Mr. Cook said they will all be attached but these units are approximately fifty feet deep and it may be thirty or thirty-five feet back from the front of the unit before the attachment and it might give an impression from the street that it is detached just depending on where it is.

Councilmember Dippolito said they had mentioned they would retain the required landscape strip adjacent to the fence, but that strip isn't required to be anything except for the grass and asked if their intention is to have trees planted along that strip. Mr. Cook replied per the site plan, they have put in a row of trees as well and they want to keep that. He said when he met with the Design Review Board early on, one of the members did want to vary the tree variety versus having them all one certain kind and they will continue to keep that planting. Councilmember Dippolito asked if in addition to that landscape strip, the landscape plan includes planting trees. Mr. Cook replied yes.

Councilmember Price said this may be more appropriate for the owner/applicant, asked what efforts had been made to market the property in the current zoning. Mr. Cook replied that would be more appropriate for someone else to answer.

Dane Nesbit stated they originally hired a real estate agent who specialized in commercial looking to utilize the current zoning AG-1 such as for kennels or veterinarian, ones which would not require coming before Council to ask for anything. He said they had several offers; one offer came very late which they did not feel was as compatible as the current plan. He said they withdrew the offering and placed it with residential specialist Patricia Scott with Harry Norman; she ran some very expensive ads in several magazines using the interior rear cover, not a small spot. The ad specifically stated for estate homes which this property zoned AG-1 according to Mr. Townsend, could have housed up to perhaps three homes or a single home. During a period of two years not one single inquiry was received for its use in that category. They had many inquiries into use for storage of trucks and construction equipment. But, when it came to the actual development of the property, there were about five different offers and all of those offers would have destroyed those trees. Mr. Nesbit said the only offer that was feasible that could be made work was the one that Mark brought forth and that is why we put in the stipulations that this was not something that we wanted to get down the line and see change. They wanted to make sure those trees were saved and that is exactly what we have today. They did try to market as residential and tried to market under commercial purposes under the current AG code. The future site plan calls for it to be residential; when they tried to market it for developmental they did so with the stipulations that whoever that would be developing it would pay utmost attention to the previous Council's request that the trees be saved.

Councilmember Igleheart asked the builder what is the physical form of the attachments between the buildings. Mr. Cook replied it would be like a shed or some type of attachment that will be much like the Devonshire community next door; a shed area that will have a roof and be a part of the structure and have a concrete

foundation as well.

Councilmember Price said regarding transportation issues, "I noticed there were several concerns expressed by the department. You may or may not be aware of those. I just want to make sure the project is feasible. Compared to 2006 the entrance onto Nesbit Ferry has relocated. Is it adequate site distance, etc., several other comments, transition taper shown as inadequate for a forty mile per hour road." She asked if someone in Transportation who had addressed those that might want to clarify that this will work. Mayor Wood asked if that is a question for the Transportation Department. Councilmember Price said either one.

Mr. Cook said he had met with Serge Osse, engineering coordinator to go over the plan and that he had dictated what the taper would need to be, what the radius would need to be, and they have met those. He said they understand that the final LDP is there may be some further discussion of that, but they did pick up those comments and basically address Serge's comments at that time. Councilmember Price asked about the intersection site distance. Mr. Cook said they have the appropriate site distance for that.

Councilmember Diamond asked Mr. Cook to explain further about the sidewalk situation and why they are requesting that variance. Mr. Cook replied there are several reasons. One, there is no sidewalk in the adjacent Devonshire community, but not because they don't have it, but more because it is a very small community and we feel like the roads will not be traversed at a higher speed limit so we felt that would be adequate for people to use. More importantly, it was some additional impervious area that we felt was not necessary for this. It is something else to put and take away from planting and grass or plantings and that it is prudent not to have it. The Planning Commission suggested we could find a way to squeeze it in on one side and if that is important to this board, we will take a look at that.

Mayor Wood thanked the applicant and said they would have time for rebuttal following public comment. He said rebuttal is limited to responding to comments from the public. The applicant may not add new information that was not previously brought up. Mr. Nesbit replied that was fair.

Mayor Wood opened the floor to public comment for or against this project and said the time limit for public comment will be five minutes per speaker. City Administrator Kay Love explained the time limit procedure.

*Public Comment:*

Debra Bernstein, 111 Devonshire Drive, said she has lived there since the inception of the development and now, several issues come to mind. The 2005 Planning Commission turned this request down. In 2006, City Council turned it down. Trees; they are still not going to knock most of the trees down. There are oaks on the property that are 200-300 years old; but some things need to be said up front. There are 251 homes in Devonshire and the board has not communicated to 246 homes their new list of requirements. Nothing has been communicated to the residents; this is not fair to the residents; not fair that when Devonshire was developed it needed to have certain land set aside for buffer zones. Every other development on the western side of Nesbit Ferry and also the eastern side before Johns Creek became a city had to conform to the same issue. Sidewalks; 100 foot variances to the road and 50 feet around. They talk about a wooden fence; there is a brick fence that first homeowners contributed toward in our sales price. She asked where is this wooden fence. Nobody has communicated. There are other issues that are rising on the surface. There are water drainage issues; now we are going to have nineteen homes contributing more to the water drainage. She said there are several homes hovering

around the fence that is their property. They are going to have issues with water drainage coming right into their backyard. The developer promises a lot of things and the City has ordinances; there are properties all along Nesbit Ferry that are in foreclosure. There are multi-family homes that have been planned for on Holcomb Bridge. She asked how can we build nineteen homes and all of a sudden have sales when the market is not good. Ms. Bernstein stated the other major issue that is not seen, is a blind curve at the corner of Nesbit Ferry Road which should be straightened out. Across the street on Champions Green, is Section 8 housing. There are safety issues with kids walking everywhere. She asked City Council to consider not granting variances, which are self-imposed, but to ensure fairness to Devonshire and other residences that the buffers are standard and not reduced; sidewalks are full and not reduced; something to slow the traffic down because the speeds are at 50 plus miles an hour. She thanked Council for their time and allowing her to speak.

Christine Turner, 75 Cheshire Drive in Devonshire, said she submitted a petition that over 20% of the neighborhood signed to keep it how it is currently zoned; no one has asked to have their name removed from that petition. She said there were a couple of my points stated on the petition and read from it as follows, "Based on the signatures below, we ask that you deny this zoning variance. Reasons for my Petition: (1) environmental impacts resulting from the proposed actions; (2) would increase traffic congestion; (3) the change in use is not desired in the neighborhood; (4) the change in use will adversely alter the characteristics of the neighborhood; (5) the change will negatively affect the neighborhood's property values." Her concerns included environmental impacts and a water retention or detention area which would be a mosquito haven if there is standing water, an increase in traffic, and that it is on a two-lane road with a blind drive. Ms. Turner said where they propose the exit it is not possible to see around the curve; if anything ever happened, it would block the entire Nesbit Ferry Road. She said that changing use is not desired, they prefer it to stay as it is currently zoned. It would make the area too dense. It would be better if the area was mixed density. Having homes and removing all the trees will alter the characteristics of that area. The change will negatively affect property values. Having too many attached homes in this area will hurt property values especially when Devonshire is fourteen years old. She said the Standards of Review indicates in number 22, Preservation of the Residential area shall be considered to carry great weight; number 23, The amount of undeveloped land in the general area affected which has the same zoning or overlay classification as the map change requested. She said a Target was recently built that is behind Devonshire and there were supposed to be townhomes built there but they have yet to be built and that has been a couple of years. She said there is not a plan to put a buffer facing Nesbit Ferry Road like Devonshire and Berkshire has and this property would be right in the middle so it wouldn't be consistent with the properties that are currently on Nesbit Ferry. She pointed out that the Planning Commission recommended denial for the following reasons: (1) the number of variances requested with the rezoning request in order to make the plan work; (2) the homes were too close to one another; (3) the extent of the project and; (4) the attractiveness of the plan. She said also she doesn't think this property has been sold yet. It is all contingent upon this zoning getting approved. She pointed out that this rezoning was requested in 2005 and was denied. The applicant is trying to make something fit where it shouldn't. She said she didn't see how they think this will sell in this kind of economy. There are so many homes in Devonshire that are for sale under foreclosure. This does not need to be rezoned.

Brandon Smith, 74 Cheshire Drive, reiterated the points made regarding traffic; it is a very dangerous curve; the additional volume on Nesbit Ferry in the morning sometimes backs up traffic to just in front of the development all the way from Holcomb Bridge Road. He also referred to the Target shopping area and noted on

*the picture on the overhead the area to the left where there are developments with chain link fencing where they were supposed to be built and never were built. Mr. Smith said the current real estate environment would not support these homes in this area.*

*Dale Nesbit, said she currently resides in DeKalb County but hopes to be back in Roswell by the end of the year. She said she lived on this property, is one of the Nesbit siblings but is not one of the current owners of the property. Ms. Nesbit said, "As far as constitutional rights have to go, you can't infringe on someone's constitutional rights when they were the ones who infringed them to start with by allowing the conditions that were put in place to maintain this property as single family use." She that for thirty years her family, all of them together, pushed to have not just conditions but extreme conditions placed upon this property adjacent to them, Devonshire to protect it for single family use. Ms. Nesbit said, "You don't build an eight foot high and in some places, a twenty foot high brick wall to protect multifamily from multifamily." She said Devonshire used to belong to her mother. Ms. Nesbit said, "The property was down zoned and down zoned because it originally got rezoned in a climate when Fulton County put two commissioners in jail for selling their zoning votes. All the density in that area and here is where health, safety and general welfare come into for the citizens for Roswell, were affected by those zoning votes over time. And you have a quadrant that in 2005 the Planning commission heard it and then the Council heard it. You have a quadrant that is in danger because of the mixture of uses being changed; health, general welfare, safety issue." She said she loves those trees and her brother makes a good speech and he is a pretty smart guy and knows those trees are important to other people. She said she would hate to see the trees come down but if you put this kind of density on that piece of property with the location of that driveway, it is very dangerous. That is why when they actually had a developer and an engineer that engineered it and why they lined up the driveway the way they did the first time; it would have impacted the trees but it wouldn't kill people. She said if that driveway is put there for that number of cars coming out and as Mr. Cook told the Planning Commission, there is a big pole there that isn't going anywhere and a dead man's curve in the other direction. The crux of this is the facts; it's been turned down before; neither the Planning Commission or the Council took it lightly when they turned it down. Nothing has really changed since 2006. Ms. Nesbit said they say they have marketed it and her brother says that he stayed an action in Fulton County court, but he didn't own the property; they didn't have control until 2009; he couldn't have stayed it in 2007. She said be wary of what you are being told. She said this is driven by density. The trees can be saved; they just can't have the density. The traffic is related to density. This is a flawed petition. She said she didn't know exactly what the use should be, but she believes it should be single family because of the extreme conditions that were placed upon Devonshire. The brick wall, fifty feet interior to it, 100 feet from Nesbit Ferry like every other multi-family development along Nesbit Ferry. She asked why this one is special. She said her family created the situation that is there; variances are for something that is unforeseen and we've known about this for thirty years. She asked that this not be taken as it is; it is not meant for multi-family, but if it does pass, then make it fair and treat everyone the same and consider that it is driven by the density.*

*There was no further public comment. Public comment was closed.*

*Applicant Rebuttal:*

*Daryl Cook said some of the things that came up were the adjacent property, buffers and up and down Nesbit Ferry Road, yes there are apartment zonings below us and above us. Those apartment zonings in Fulton County required 100 foot setbacks and 50 foot buffers. The wall that is up on the adjacent property was put in and the*

buffers around that were additionally put in because the Nesbit family wanted their mother to stay in this home until her passing; the reason a lot of these things were done was to protect the matriarch of this family so she could live out her life there. This easily could have been sold at the time and it would have had the same density of 8 units per acre that Devonshire has but they wanted to leave a little area for their mother to remain. He said there was nothing that said this property was going to remain single family, detached; the wall was put up for peace for their mother. Mr. Cook said Community Development Director Alice Wakefield would certainly know that Fulton County required these things for that zoning for apartment. He said they were not asking for apartment zoning. If they were asking for apartment zoning, maybe 100 foot would be appropriate but it is not; nor is it consistent with the rest of the neighborhood or on the other side of the road. Regarding drainage issues, there will be stormwater on this property and it will meet or exceed the requirements for peak development flow rates from this property. There will be channel projection and water quality volume protection; detention will attenuate the flows to or below predevelopment peak flow rates. He said they will be putting in a lot of sidewalks along the frontage; there will be connecting sidewalks that are disconnected in front of Devonshire, beginning and ending at Devonshire; in addition, a bike lane will be included with sidewalks attached. Mr. Cook offered to revisit that if Council wanted to review it. Referring to trees, Mr. Cook said the healthy specimen trees will be saved; the arborist has been to the site for the City and as well as an independent arborist. Mr. Cook noted there has been blight of that property due to pine beetles and that most of the trees have issues already; they will replant a lot of trees along the site perimeter and interior.

Mr. Cook said there will be a slight increase of traffic from these nineteen units but looking at the total count of thousands of cars that come and go, it is not significant. He said that may not be a popular thing to say. He noted that he would love to tell say it will get better with this but we know it is not going to get better but it is better in that there will be a road there versus a driveway or multiple driveways if you went in with single family homes there and you would probably get at best three homes there, which would still require a lot of infrastructure. Mr. Cook said this is effectively a mixed density. It is a much lower density than the surrounding property, allowing 3.8 or 3.72 or whatever per acre is much less than the surrounding property so this is an appropriate transition if mixed density is wanted. He said that going just to three units is hardly appropriate when all surrounding is approaching 6 and 8 units per acre. He said in reference to market values, they see they are improving, activity has picked up and they believe those townhomes near Target will eventually come around. He said the economy is improving in many ways, this is a very attractive area and that is a big plus to the sales. These homes will sell for substantially more than the Devonshire which will actually lift Devonshire because of a higher price point here. He referred to discussion about Devonshire being down zoned, which is what he heard, but it certainly was not. He said zoning something to apartment property is hardly a down zoning; that is a high density zoning and it meets the high density currently. He said they are actually suffering what he would consider almost a down zoning considering the surrounding properties.

Dane Nesbit said when it comes to individuals and foreclosure, home prices falling that he wished he could wave a magic wand and help everyone in this city and this state. It is simply a matter of a free market. If we place something on the market that will not sell, it will fail. Mr. Nesbit said what these gentleman are doing is putting their money at risk with a product that should do well in the neighborhood. It is not in competition with the surrounding neighborhood, it is totally different in its texture. He said that this morning, he bid on a foreclosure piece of property within 200 yards of this property that we are talking about rezoning. He asked, "Would a rational reasonable person do that if they thought the traffic was going to be so burdensome

and overbearing that it would affect their own personal life?" He said the answer is no, and he may not be the smartest person in the world but is far from someone who is going to do something silly to make a point. He said he wanted to show quickly a rebuttal to the woman who spoke to the fact that the family had fought and as Mr. Cook had stated, the land was maintained because it was their mother's wish that she be able to live there until the day she died. He said we were unaware of any attempts by our sister who perhaps best classifies a professional political wannabe. He displayed a copy of a lawsuit, *Nesbit vs. Fulton County Board of Zoning* that was filed in 1997 and said his mother had a stroke and was completely debilitated. Mayor Wood interrupted to say that he didn't think the lawsuit was relevant; he appreciated Mr. Nesbit's comments but he didn't believe it would clarify any of the issues. Mr. Nesbit went on to the condition of the property. He displayed photographs taken behind the home of Ms. Turner, who spoke earlier and the other gentleman who spoke of the trees and liking to be able to see the trees; there is lawn furniture tossed over and an unkempt area. He said this is an opportunity to clean up a distressed property and hopes they will look at the overall benefit, not only to Devonshire in cleaning that up but to the tax base in the community and bringing forth an opportunity to put something of great value on the property.

Daryl Cook asked to address the site distance issue. Mayor Wood allowed him to speak on one more point. Mr. Cook stated there would be the appropriate site distance for this. He stated that this driveway is actually more appropriate than the earlier lining up with the subdivision across the street and is almost where the existing driveway is now for the home that is on the property, just about in the exact spot. He said, the site distance is appropriate in each direction and would be provided to staff and certified by staff. Mayor Wood thanked Mr. Cook.

There were no further comments. Mayor Wood closed the meeting to public comment.

*Council Comment:*

Councilmember Wynn asked if the Transportation Department could comment on what Mr. Cook had said about the line of site if the proposed driveway is put in that location.

Transportation Deputy Director David Low said Transportation staff checked the site distance and found that not just the stopping site distance is adequate but also there is also adequate intersection site distance.

Councilmember Wynn asked if as the property is now zoned and was conditioned to five homes on this piece of property, would that entail five different driveways on this piece of property as Mr. Cook suggested.

Community Development Director Alice Wakefield replied it could, but more than likely it would entail a series of flag lots, which share driveways. Councilmember Wynn referred to the 100 foot buffer that Ms. Nesbit brought up that is only for apartments and said across the street in the city of Johns Creek they do not have that 100 foot buffer right now because they are not multi-family, they are not apartments; she asked if that is correct. Ms. Wakefield said that is correct. Councilmember Wynn said it is not multi-family; it is the apartment. Ms. Wakefield said it is the apartment and it was a condition that Fulton County would routinely apply to developments like apartments. Councilmember Wynn said not so much town homes as apartments. Ms. Wakefield said, "Not so much townhomes."

Councilmember Diamond said she didn't think that the applicant had addressed where the fence would go and asked if they could elaborate on that. Mr. Cook replied

*that the fence would be on the property line between Devonshire and this property; it would be on the property line and then inside that would be the landscape.*

*Councilmember Igleheart said he had a question for City Attorney David Davidson. He said it was stated in talking about the constitutional challenge that we are taking from this property but is it not correct there is value for three or four or whatever the number would be homes built as currently zoned.*

*City Attorney David Davidson replied there would be value to that. He stated they marketed for that and couldn't sell but they had offers for the other allowed uses that are currently on the property. Mayor Wood cautioned Council to be careful of their questions to Council because the questions may benefit us and they may not benefit the City's position. He said he preferred questions about the legalities of zoning issues to be addressed to him in a confidential matter rather than open Council. Mayor Wood said it is fine to state their positions.*

*Councilmember Igleheart said he wanted to follow up regarding the statement made that there were commercial offers for things there even recently, so apparently there is value to other people that don't own that property. He asked if there was a settlement to this lawsuit that was brought up earlier. Mr. Davidson replied, no. Councilmember Igleheart said so the numbers that were brought up as a starting point are irrelevant because nothing ever happened with that so all the original things brought up are totally irrelevant and don't apply to things happening here. Councilmember Igleheart said that was all of his questions but he also had comments. Mayor Wood said he could make comments at this time either before or after the motion. Councilmember Igleheart said you can save the trees. He said to say that is why they need a variance is a false choice. Anything that comes through that needs four variances essentially to create the zoning category we don't have is a completely speculative land use buy here; it doesn't justify rezoning. Councilmember Igleheart said the City has had numerous cases of the same thing and in fact it was this case as well and we said no and yes any one little property may not have that much impact to what has already happened on Nesbit Ferry. He said that there is "more stuff up and down every road and then you are surprised that there is a major traffic problem and other infrastructure issues. We do it to ourselves and there are many things through here that say that between safety, traffic, value of property that does not justify moving forward with this many variances."*

*Mayor Wood said at this time we will entertain a motion.*

*Councilmember Price said she had one question regarding the conditions that we were given last evening and then modified today. She asked if those are the result of an official agreement between the applicant and Devonshire?*

*There was an inaudible comment from the floor.*

*Mayor Wood said we are not hearing comments from the floor. The Mayor asked if there was a representative present from the HOA and asked them to come forward and give their name and association with Devonshire. He said we recognize this isn't speaking for every member of Devonshire but if there is an understanding between the HOA and an organization, it is appropriate to hear what that is.*

*Kathy Murphy, 34 Devonshire Court said she is the current President of the Devonshire HOA. Mayor Wood asked how many members there are of the HOA. Ms. Murphy replied there are 251 homes but there are five board members. Mayor Wood asked if they are elected by the 251 homeowners. Ms. Murphy replied they are.*



Mayor Wood asked her if there was an understanding or agreement and if it was fairly represented by the applicant. Ms. Murphy replied it was fairly represented. Mayor Wood asked for Council questions for the Devonshire HOA.

Councilmember Price asked if those conditions as seen earlier are a result of an agreement officially between Devonshire and the applicant. Ms. Murphy replied, "Exactly after several meetings and conversations over the last several weeks." There were no further questions for Ms. Murphy.

Councilmember Price said this is a difficult situation obviously with the family having had some problems over the years and it was attempted to maintain this as a single family zoning for a long time in deference to their mother. At this time however, there is no single family in either direction around it and some of the concerns about decreasing the property value to Devonshire she was not sure that would be an issue given that these homes, as it was mentioned, have a price point that would start a little higher. She said having seen pictures of the current property, it is an unattractive nuisance that is beyond the normal vandals and looks like there is some activity not particularly conducive to good activity in that area. She said she would like to see it at a smaller density; the rights of the applicant to do this are clear based on their attempts to use it at the current zoning. She said that in general she was in favor of moving ahead.

Councilmember Wynn said one thing she would like to strongly suggest to Mr. Cook if this does pass is that at least one side of the development have a sidewalk. She said several months ago Taimen on the River had come to them and one thing that was put on them was to have sidewalks and she likes to be consistent regarding sidewalks. Councilmember Wynn noted that she knows the Nesbit family and has known Dale for many years, this is going to be a very tough decision. She said she agrees that something has to be done with this property.

Councilmember Dippolito said one of the things we always strongly encourage people to do when they come in for rezoning is to meet with the neighbors and to come to a meeting of the minds. He said certainly the applicant has done that in this case or his representatives have done that. He applauded both sides for getting together and working hard at coming up with an agreement that works for both sides. He said Devonshire is certainly the most impacted by this decision and it is good to see that they are comfortable, at least the board who represents the homeowners, is comfortable with the decision.

Mayor Wood said at this time, he would entertain a motion.

Councilmember Diamond thanked all of the people who worked so hard on both sides on this, making the effort to understand each other's needs and concerns. It took a lot of time and a lot of people's work schedules were impacted. She said the Devonshire residents should rest comfortably in the idea that they are well represented and they very much have their concerns at heart. That doesn't necessarily mean that they are excited to have this but they are trying to work out the very best scenario to represent what they can do. She offered hoped in that there is some evidence in Roswell of new homes going up and selling. She said she has been hearing from realtors for the last year that there was not enough new inventory, that the market for newer homes is there but there is not inventory in Roswell. She said there are numerous neighborhoods around her that have become subdivisions again that are selling quickly and have already pre-sold more than half of them.

Councilmember Diamond said we have this issue in a lot of parts of town where the

*heirs are charged with doing something with the family homestead, it is not an unusual situation for us and we have more and more of these coming. She said that is one of the reasons the City has embarked on this unified development code to find appropriate zoning categories for these kinds of things. She said this would have eventually looked like something along the cottage housing line, which would potentially have even been more dense. She agreed with Councilmember Wynn regarding the sidewalk.*

*Councilmember Diamond said she would like to make a motion that would incorporate a few things and would read though it or asked if she could just refer to the items on the overhead display. Mr. Davidson said she did not have to read it all. She referred to the items listed on the overhead screen as S1-6, Staff's Recommendations 1 through 6.*

*Councilmember Diamond noted they did not address the time limit question. Mayor Wood asked if the applicant had a recommendation on a time limit. Councilmember Diamond said that would be hard to do with that many homeowners. Mayor Wood asked the Homeowner's Association for their thoughts on the time limit. An unidentified speaker said, "sixty days." Mayor Wood asked if they thought sixty days was sufficient. There was an inaudible comment from the audience. Mayor Wood said thank you for your comments.*

*Councilmember Wynn said she understood the sixty days but her subdivision had tried to do this for traffic calming and it is harder than what most people would think it is. Councilmember Wynn suggested ninety or one hundred twenty days, whatever Councilmember Diamond thinks, but sixty days would not work. There were some inaudible comments. Councilmember Diamond suggested ninety days.*

**A motion was made by Councilmember Diamond, seconded by Councilmember Dippolito, for Approval of RZ12-04, CV12-01, 9050 Nesbit Ferry Rd., Dane Nesbit, Land Lot: 835, with staff's conditions numbers 1 through 6 and the four concurrent variances requested by the applicant with the exception of number 3 being one-side sidewalk and with the thirteen (13) conditions proposed by the applicant and passed through the homeowner board with a time limit of ninety (90) days on condition number 6. Councilmembers Diamond, Dippolito, Orleans, Price, and Wynn voted in favor. Councilmember Igleheart opposed. The motion carried by the following vote:**

**In Favor: 5**

**Opposed: 1**

**The Mayor and Council meeting adjourned for a ten-minute break.**

## 5.

**Approval of a Resolution to adopt the Groveway Community Hybrid Form-Based Overlay Design Guidelines.**

*Presented by Alice Wakefield, Community Development Director*

*Community Development Director Alice Wakefield said the Design Guidelines for Groveway Hybrid Form-Based Overlay document is a companion document to the Form-Based regulations that were approved on April 16. The document is organized with text, diagrams and pictures. She clarified that the diagrams and pictures are included for illustrative purposes only and that any proposals received for this project will be reviewed and approved by either the Design Review Board (DRB) or the Historic Preservation Commission (HPC). She thanked Dave Schmidt and his architect for reviewing this; Lew Oliver and John and Leslie Carruth for reviewing the document and providing their assistance and comments. She said the majority of their comments had been incorporated along with some new comments that were just received from Leslie Carruth on Friday.*

*Ms. Wakefield referred to a slide on the overhead that listed their comments and noted they are clarifications to items on pages 38, 39 and 43 of the guideline document and she summarized them as follows:*

- *Page 38, F. Windows, 2 Materials, a.*

*"Windows may be wood, aluminum clad wood, or pvc clad wood, storefronts may be black, bronze anodized, or mill finish aluminum with a variety of mull sizes per the design."*

*(The wording and punctuation changes are indicated as underlined in the corrected text above.)*

- *Page 38, H. Doors, 2 Materials, b.*

*"Exterior doors for mixed-use, office, out-lot, store, factory, and live/work building types may be black, bronze anodized, or mill finish aluminum."*

*(The wording and punctuation changes are indicated as underlined in the corrected text above.)*

- *Page 39, K. Porches, 2 Materials, f.*

*"Railing systems are to be painted wood, iron, vinyl, aluminum, or steel."*

*(The word "vinyl" was removed.)*

- *Page 43, Colors and Finishes, 1st paragraph*

*"Buildings will be roofed in architectural grade paint grip galvanized metal shingles or authentic standing seam, wood shingles, slate, early 20th century colored architectural grade asphalt shingles, or flat terra cotta tiles."*

*(The words "architectural grade" were removed from one part of the sentence and incorporated later in the sentence; and the words "paint grip" were added.)*

*Ms. Wakefield said staff also asks that several pictures that were just received this morning be added to the document. The pictures to be added are examples of multi-family use and a parking deck that is interior to the building to be included in the Multi Family section on pages 16 through 17. Another picture to be added on page 12 is an example of a mixed use development with only three stories. Staff would also like to include an illustration of fenestration windows on page 38. She said lastly, staff requests that a statement provided by Leslie Carruth about how to use the Groveway Design Guidelines be added to the document to read as follows: "These design guidelines have been created to support the Groveway Overlay District. The ordinance contains the rules for the Groveway area. The guidelines are for illustration purposes to be used when developing a project in this area of the city. The*

*guidelines are separated into eight different sections related to commercial, institutional and residential. Each section contains an architectural definition page, an illustration page and photos. The architectural definition page details form, fenestration and additional features. The illustration page diagrams how each of these three items work together and the photos are examples. The remaining sections deal with parking, architectural criteria, colors and finishes, and hardscape and landscaping methods. The final section indicates approval by either the Design Review Board or the Historic Preservation Commission."*

*Ms. Wakefield said the hybrid-form based regulations go into effect tomorrow and staff recommends approval of this document with these noted changes.*

*Mayor Wood asked who is responsible for applying these guidelines or makes the decisions as to whether the guidelines have been met. Ms. Wakefield replied staff will review and then it will primarily be the Design Review Board (DRB) or the Historic Preservation Commission. Mayor Wood asked if the DRB can approve a design that does not meet these guidelines if they feel it is appropriate. Ms. Wakefield replied, "No sir, but the ordinance itself will take precedence. These are just for illustration." Mayor Wood said, "I think you misunderstood my question. If the design is found suitable by the DRB, it does not have to meet specifically these guidelines. Is that a fair statement? It is a nice design, it may not be something that exactly fits this." Ms. Wakefield replied, it does not have to be exactly as the photographs in the document but it has to meet the regulations. Mr. Wood said these are guidelines, not regulations. Ms. Wakefield said that is right. Mayor Wood said then it has to meet the regulations. Ms. Wakefield said yes it has to meet the regulations but it would have to be something that in working with the DRB or the HPC that they could agree upon. Mayor Wood said they could either meet these guidelines or it could be something possibly better. Ms. Wakefield said they could with the DRB or the HPC's approval.*

*Mayor Wood asked for Council questions.*

*Council Comment:*

*Councilmember Price asked where this insertion will go. Ms. Wakefield replied it will probably be added to the page following the Table of Contents. Councilmember Price asked if it will be prior to the introduction or to supplant it. Ms. Wakefield replied it could be prior to the introduction.*

*Councilmember Igleheart made a comment on the suggested additions on the photos and said he would not include something that is not actually allowed. The parking deck or whatever the second half of the picture shown in the photo had seven (7) stories. He said the idea is good but he would not include a picture of what is not allowed. Ms. Wakefield said that portion could be cropped out from the photo. Councilmember Igleheart commented on making things easy as possible and each of the descriptions, mixed use, office, everything; in the form it says 2-4 stories permitted, 5 stories conditional and that is true but of course it is only in certain places. The 4 and the 5 are only on primary streets. Ms. Wakefield said that could be added to each section. Councilmember Igleheart said that needs to be clarified so people understand.*

*Councilmember Dippolito said there been many discussions on the street section and we seem to have wound up where we started and asked if that is by design. Ms. Wakefield said actually that is the street cross section that was approved as part of the ordinance; the 50 foot right-of-way. There was a lot of discussion that went back and forth when the ordinance came up about making it wider where there could be on street parking but that is the cross section that was approved as part of the*

ordinance. She said it was agreed at that time that this would stay with the 50 foot right-of-way. Councilmember Dippolito said he recalled that we approved the ordinance with streetscape subject to review under the design guidelines. He asked if there has been further discussion about that. Ms. Wakefield replied she did not recall that. Councilmember Dippolito asked if she had an alternative street section that was discussed. Ms. Wakefield said we had other street sections that came up that were prepared by Lew Oliver as the course of the review of the ordinance; she did not have those with her. She said we have stayed with this one because it this is what was approved as part of the ordinance. She said, "I am sorry, I just do not recall that. We can add those sections. That's not a problem because we do have one that is the 60 or 64 and we can add that to this if this is what this body chooses for us to do." Councilmember Dippolito said that would be his preference because one of the critical pieces of these design guidelines is the streetscape and we need to make sure we get that correct.

Mayor Wood clarified that Council is up against a deadline here because this goes into effect. There are two options, Council can either defer this, we can get these guidelines to attach tonight or we can add them at a later time. We need to pass something tonight. Councilmember Dippolito said he was comfortable with this being one of the street sections but thinks there are additional street sections that we looked at and he would like to see those incorporated and we could do that at a later date. Mayor Wood said that was his suggestion; if they are not available tonight, he would rather not hold this up but add them at a later date as Councilmember Dippolito suggested.

Councilmember Igleheart thanked Councilmember Dippolito for bringing this up because that is one of the main reasons he opposed what was actually passed because we did have such long discussion about extending that. He said he agrees with Ms. Wakefield that ultimately what was passed was back to this; there was no discussion about putting it back in and his concern is if they do that, who is going to choose what that is along the whole street where part of it, 10 feet could be 50 and 30 feet can be 60. He said he didn't know how that works. He said after a trip he made to Greenville he looked at it much more closely and they are much wider than what we are talking about; we are selling ourselves short for hoping we are going to get something similar when we don't allow for the same thing. He said he agrees with Mayor Wood that we have to pass something but hoped we would continue to look to expand that streetscape. Mayor Wood asked if it is fair to say these guidelines can be changed from time to time. Ms. Wakefield replied that they can. Mayor Wood said then you can add, strike, or change one.

Councilmember Diamond said one of the next proposals after this is some kind of regular review once Mr. Townsend returns from his trip. I do think there is a lot of interest from architects and other professionals in making this the best it can be. We would like to continue that process so we can keep regular updates and regular deadlines so we are not just infinitely talking to try and get a handle on that. She pointed out the need for a grammar correction on the document. Ms. Wakefield replied that correction would be made.

Mayor Wood thanked John and Leslie Carruth for their assistance in reviewing this.

**A motion was made by Councilmember Diamond, seconded by Councilmember Dippolito, for Approval of a Resolution to adopt the Groveway Community Hybrid Form-Based Overlay Design Guidelines as submitted with comments by Council. The motion carried by the following vote:**

**In Favor: 6**

**6. Approval of an Amendment to Chapter 7, Land Development and Environmental Protection, of the City of Roswell Code of Ordinances. (First Reading)**

*Presented by Alice Wakefield, Director of Community Development*

*Director of Community Development Alice Wakefield said EPD has recommended that the City modify Article 7.3 of the City's Erosion & Sedimentation Control Ordinance to remove conflicts with the state codes. She summarized the changes as follows:*

*The first change is to Section 7.3.4(C)(17) Minimum Requirements for Erosion, Sedimentation and Pollution Control Using Best Management Practices as requested by EPD to comply with their regulation and also the City Attorney has asked us to make this change to correct a spelling error in the ordinance.*

*The second change is to revise Section 7.3.4(D)(17)(d)(1) Minimum Requirements for Erosion, Sedimentation and Pollution Control Using Best Management Practices on page 15, that also relates to the request for EPD regarding development and land disturbance permits.*

*The third change is to Section 7.3.6 (A) Inspection and Enforcement an addition that clarifies inspection and enforcement on page 19.*

*The fourth change is to Section 7.3.10 (d) Establishment of Soil Erosion Fund and Committee to revise the makeup of the committee to reflect the departments that are Community Development and Environmental/Public Works.*

*The fifth change is to Section 7.3.11 Effectively, Validity and Liability to put in the effective date once this amendment is adopted.*

*Ms. Wakefield requested that the first reading of this amendment be approved and moved to the July 9, 2012 Mayor & Council meeting.*

*City Attorney David Davidson conducted the first reading of an ORDINANCE TO AMEND CHAPTER 7, LAND DEVELOPMENT & ENVIRONMENTAL PROTECTION, ARTICLE 7.3 EROSION & SEDIMENTATION, OF THE CITY OF ROSWELL CODE OF ORDINANCES, stating: Whereas, the Mayor and Council is the governing authority of the City of Roswell, Georgia; and Whereas, the City of Roswell desires to amend its Code of Ordinances in compliance with State Law pursuant to the Georgia Erosion and Sedimentation Act, O.C.G.A. § 12-7-8; and Whereas, the City of Roswell desires to amend its Code of Ordinances pursuant to guidance by the Georgia Environmental Protection Division (EPD) in order to retain its designation as a "Local Issuing Authority"; to comply with O.C.G.A. § 12-7-8(a)(1) wherein "standards, requirements, and provisions of the ordinances for monitoring, reporting, inspections, design standards, turbidity standards, education and training shall not exceed the state general permit requirements"; and Whereas, the City of Roswell desires to amend its Code of Ordinances pursuant to recommendation by the City Engineer in order to reflect current department liaison structure as it relates to the membership of the Soil Erosion Fund Committee, correct spelling errors and add the clarification that designees of the city engineer may conduct inspections; and Whereas, Mayor and Council have reviewed the proposed changes to Chapter 7, Article 7.3 listed above and detailed below: Now, Therefore, to accomplish the foregoing the Mayor and Council pursuant to their authority, adopt the following ordinance:*

1.

*The Code of Ordinances of the City of Roswell, Chapter 7, Land Development and Environmental Protection, Article 7.3 Soil Erosion, Sedimentation Control and Pollution Control, shall be amended by deleting therefrom the first paragraph from Section 7.3.4(C)(17) Minimum requirements for Erosion, Sedimentation and Pollution Control Using Best Management Practices, and substituting therefore a new paragraph to read as follows:*

*17. Rezoning plans and development plans must conform to topography and soil type so as to create the lowest practical erosion potential. No rezoning application or development plan application shall be considered on any slope in excess of twenty-five (25) percent within five hundred (500) feet of any state waters or stream identified on the Water Resources Protection Map, latest version, without the submittal of a Steep Slope and Erodible Soils Evaluation. For purposes of this paragraph, "state waters" excludes channels and drainage ways which have water in them only during and immediately after rainfall events and intermittent streams that based on a field evaluation do not have a discernible flow at the time of the evaluation. Field evaluations shall not be made within forty-eight (48) hours of any rainfall event of 0.10 inches or greater or within seven (7) days of any rainfall event of 0.5 inches or greater. The rainfall measurement shall be based on the City of Roswell rainfall gauge closest to the site.*

2.

*Article 7.3 Soil Erosion, Sedimentation Control and Pollution Control, Section 7.3.4(C)(17) Minimum requirements for Erosion, Sedimentation and Pollution Control Using Best Management Practices, is further amended by deleting therefrom the first paragraph from subsection 7.3.4(C)(17)(d)(1) and substituting therefore a new paragraph to read as follows:*

- (1) Poor Condition: < 50% ground cover*
- Fair Condition: 50% to 75% ground cover*
- Good condition: > 75% ground cover*

*Exemptions to this section shall be as follows: No application for a development permit shall be approved for activity inconsistent with this section, unless:*

3.

*Article 7.3 Soil Erosion, Sedimentation Control and Pollution Control, is further amended at Section 7.3.6 Inspection and Enforcement, by deleting subsection (A) and substituting therefore a new subsection (A) to read as follows:*

*A. The city engineer or his designee will periodically inspect the sites of land-disturbing activities for which permits have been issued to determine if the activities are being conducted in accordance with the plan and if the measures required in the plan are effective in controlling erosion and sedimentation. Also, the Local Issuing Authority shall regulate primary, secondary and tertiary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. Tertiary permittees shall be responsible for installation and maintenance where the tertiary permittee is conducting land-disturbing activities. If, through inspection, it is deemed that a person engaged in land-disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this ordinance, a written notice to comply shall be served upon that person. The notice*

*shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this ordinance.*

4.

*Article 7.3 Soil Erosion, Sedimentation Control and Pollution Control, Section 7.3.10 Establishment of Soil Erosion Fund and Committee, is amended by deleting therefrom subsection (d) and substituting therefore a new subsection (d) to read as follows:*

*(d) Pursuant to the provisions of this section, a City of Roswell Erosion and Sediment Control Fund is hereby established. All fees collected under this section shall be credited to such fund. Disbursements from this fund will be made by the mayor, after an affirmative recommendation from the Erosion and Sediment Control Fund Committee ("committee") is received. The erosion and sediment control committee shall be composed of the mayor, the councilperson assigned to be the liaison to the environmental/public works department, the councilperson assigned to be the liaison to the community development department, the city administrator, the director of environmental/public works, the director of community development, and the director of transportation. The city administrator, two (2) of the three (3) elected officials (the mayor and two department liaisons), and two (2) of the three (3) directors (department heads) shall constitute a quorum and shall be able to transact business of the committee. Each member shall have equal voting privileges on committee issues. The city engineer shall serve as the fund coordinator and shall review properly completed applications for eligibility to fund proceeds. The city engineer shall also serve as the technical presenter of the application to the members of the committee but shall not be considered a member of the committee for voting purposes.*

5.

*Article 7.3 Soil Erosion, Sedimentation Control and Pollution Control, Section 7.3.11 Effectivity, Validity and Liability, subsection 7.3.11(A) is amended by deleting such subsection and substituting therefore a new subsection 7.3.11 (A) to read as follows:*

*A. Effectivity*

*This ordinance shall become effective on the day of its adoption or the first day of*

*\_\_\_\_\_, \_\_\_\_\_.*

*City Attorney David Davidson said if approved, this will be the first reading.*

*There was no Council comment. There was no public comment.*

**A motion was made by Councilmember Diamond, seconded by Councilmember Orans, for Approval of an Amendment to Chapter 7, Land Development and Environmental Protection, of the City of Roswell Code of Ordinances on First Reading and be placed on the Mayor and City Council agenda for 7/9/2012. The motion carried by the following vote:**

**In Favor: 6**



**7. Final Plat - Taimen on the River Subdivision, Riverside Rd.,  
Land Lots: 493 & 494.**

*Presented by Jackie Deibel, Planner III*

*City Planner Jackie Deibel said this is Taimen on the River final plat located on Riverside Road which contains ten (10) single family homes. All the work in the field is complete. The plat has been signed by the city engineer. She said staff recommends approval of the final plat.*

*Mayor Wood asked if this includes a trail easement. Ms. Deibel said it does; it is included on the plat.*

*Council Comment:*

*Councilmember Dippolito asked for clarification of exactly where the trail easement is located; is the trail easement the road itself. Ms. Deibel said representatives from Taimen on the River are present and can respond to that question.*

*Paul McKittrick, representing Archway Custom Homes, the developer and builder, said the trail easement is at the end of the "Y" and goes to the Grimes Bridge Subdivision in the back. It is the wide area seen between lot 10 and the four acre conservation easement. Councilmember Dippolito asked if it is the gray area from the Y to the back. Mr. McKittrick said that is correct. Councilmember Dippolito said that is just an easement and you are not building an actual multi use path or anything. Mr. McKittrick said that is correct. Councilmember Dippolito said it is just the easement and asked if that is in favor of the City. Mr. McKittrick replied that is correct. Councilmember Dippolito asked if the curb is a 6x6 on gravel. Mr. McKittrick replied the curb is to the design that was specified at the City Council meeting when this was approved. An unidentified speaker responded that it is 6 inch. Councilmember Dippolito asked if it was flush to the asphalt so that the water would run off. Mr. McKittrick replied that is correct. He explained that they are working on sustainability there; they wanted sheet flow across the road into the four acre conservation easement on the south side so all the curb is flush. They backfilled the curb and soil cemented the road so it is all bound together. Councilmember Dippolito said that is great, that was an important aspect of this and thanked them for doing that.*

*Mayor Wood asked staff what is the status of connecting this trail to the adjacent neighborhood.*

*Director of Transportation Steve Acenbrak said he had not been there in a while but he had walked that several times with staff and if he is remembers correctly, they are trying to finalize the agreement with the adjacent property owners for the alignment. He said there are two houses; one resident is in favor and the other is not sure and wants to make sure it is not too much of an issue; one of which involves a bridge and the other doesn't. At this point, they are just trying to work it through. He said generally it will work.*

*Councilmember Orlans asked if there is a place to continue the trail on to the other subdivision. Mr. Acenbrak replied yes, there is a cul-de-sac on the other end, and there are two property owners. He said this is fine and they can tie right into their property. It is the other end that is rugged, and includes a winding creek; they are trying to put in the trail where it will minimize the impact to the land. It probably will be mostly boardwalk, somewhat elevated on one side, depending on how it meanders through there and the end treatment. He said they have walked it many times and they are trying to finalize the details.*

*There was no further Council discussion. There was no public comment.*

**A motion was made by Councilmember Diamond, seconded by Councilmember Wynn, to Approve Final Plat - Taimen on the River Subdivision, Riverside Rd., Land Lots: 493 & 494. The motion carried by the following vote:**

**In Favor: 6**

**8. Approval of a Resolution to Transmit the Short Term Work Program (STWP) and Capital Improvement Element (CIE) covering the five year period 2012-2017.**

*Presented by Jackie Deibel, Planner III*

*City Planner Jackie Deibel said this is the annual update to the Short Term Work Program and Capital Improvement Element. All departments, as well as the Budget Director, have reviewed this. The Planning Commission reviewed it in their meeting last month and made their recommendation to transmit to the state. Staff recommends approval for transmittal so it can be sent for final adoption.*

*There was no Council discussion. There was no public comment.*

**A motion was made by Councilmember Diamond, seconded by Councilmember Dippolito, for Approval of a Resolution to Transmit the Short Term Work Program (STWP) and Capital Improvement Element (CIE) covering the five year period 2012-2017. The motion carried by the following vote:**

**In Favor: 6**

**Environmental / Public Works Department - Councilmember Kent Igleheart**

9. **Approval of Gilhams Lake Homeowners Association's (HOA) application through the City's Lakes and Ponds (L&P) Partnership Program for funding in the amount of \$100,000 and approval of Budget Amendment 24071301-06-11-12.**

*Presented by Stuart Moring, Director of Public Works/Environmental*

*Environmental/Public Works Deputy Director Mark Wolff stated this is the approval of the Gilhams Lake Homeowners Association application to the City's Lakes and Ponds Partnership Program. This program allows for the City to assist property owners by reimbursing an approved applicant's portion of the cost of silt removal or adding inlet and outlet controls to detention ponds. Staff has reviewed this application and has determined it meets all the criteria of the program. If approved, the City will reimburse \$100,000 which is 50% of the estimated cost of the project. The Soil and Erosion Fund Committee has approved approximately two-thirds of the funding and the remaining one-third would come from the unused amount previously approved Lakes and Ponds project.*

*There was no Council discussion. There was no public comment.*

**A motion was made by Councilmember Igleheart, seconded by Councilmember Orland, for Approval of Gilhams Lake Homeowners Association's (HOA) application through the City's Lakes and Ponds (L&P) Partnership Program for funding in the amount of \$100,000 and approval of Budget Amendment 24071301-06-11-12. The motion carried by the following vote:**

In Favor: 6

**Public Safety - Councilmember Becky Wynn**

10. **Approval for the Mayor and/or City Administrator to sign a renewal contract for an extension of five (5) years with American Traffic Solutions (ATS) for new safe light camera locations.**

*Presented by Dwayne Orrick, Chief of Police*

*Councilmember Wynn said she had just talked to City Administrator Kay Love about additional information that has come to light on this subject and they would like to ask for a deferral to June 25, 2012.*

**A motion was made by Councilmember Wynn, seconded by Councilmember Igleheart, that this Item be Deferred and placed on the Mayor and City Council agenda for 6/25/2012. The motion carried by the following vote:**

In Favor: 6

**City Attorney's Report**

11. **Recommendation for closure to discuss personnel, acquisition of real estate and litigation.**

A motion was made by Councilmember Dippolito, seconded by Councilmember Wynn, for closure. The motion carried by the following vote:

In Favor: 6

**Adjournment**

*After no further business, the meeting adjourned at 9:43 p.m. for a work session regarding Cultural Arts Board Roles and Responsibilities and the Strategic Economic Development Plan.*